

Central Valley Regional Water Quality Control Board
HEARING PROCEDURE
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT
R5-2009-0505
ISSUED TO
CALIFORNIA DAIRIES, INC.
TIPTON MILK PROCESSING FACILITY
TULARE COUNTY

SCHEDULED FOR 23/24 April 2009

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF YOUR DOCUMENTS AND/OR TESTIMONY.

Background

The Executive Officer of the Central Valley Regional Water Quality Control Board (Central Valley Water Board or Board) has issued the enclosed Administrative Civil Liability (ACL) Complaint pursuant to California Water Code (CWC) section 13323 against California Dairies, Inc. (hereafter Discharger) alleging that it has violated CWC section(s) 13385 and 13385.1 by violating effluent limits contained in Waste Discharge Requirements (WDRs) Order 94-295 and by submitting late reports under the monitoring and reporting program that accompanied Order 94-295. The Complaint proposes that administrative civil liability in the amount of one million four hundred and twenty-eight thousand dollars (\$1,428,000) be imposed as authorized by CWC section 13385. A hearing is scheduled to be conducted before the Central Valley Water Board during its 23/24 April 2009 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the ACL Complaint. At the hearing, the Central Valley Water Board will consider whether to adopt an administrative civil liability order assessing the proposed liability, or a higher or lower amount, or reject the proposed liability. The public hearing on 23/24 April 2009 will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at the Central Valley Water Board's offices at 11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670-6114. An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at <http://www.waterboards.ca.gov/centralvalley/>

Hearing Procedures

The hearing will be conducted in accordance with these Hearing Procedures. A proposed draft version of the Hearing Procedures was prepared by the Prosecution Team, and was approved by the Central Valley Water Board's Advisory Team. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with section 648, subdivision (d), any procedure not provided by this Hearing Procedures is deemed waived.

Except as provided in section 648 and herein, subdivision (b), Chapter 5 of the Administrative Procedures Act (commencing with California Government Code § 11500) does not apply to this hearing.

THIS AND THE PROCEDURES AND DEADLINES HEREIN MAY BE AMENDED BY THE ADVISORY TEAM AT ITS DISCRETION. **ANY OBJECTIONS TO THESE HEARING PROCEDURES MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN 2 MARCH 2009 OR THEY WILL BE WAIVED.** FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Hearing Participants

Participants in this proceeding are designated as either "parties" or "interested persons." Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

- (1) Central Valley Water Board Prosecution Team
- (2) California Dairies, Inc., referred to as the Discharger

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) no later than **5 p.m. on 05 March 2009** to Lori Okun, at lokun@waterboards.ca.gov. The request shall include an explanation of the basis for status as a designated party (e.g., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person's interest. Any opposition to the request must be submitted by **5 p.m. on 12 March 2009**. All parties will be notified by 5 p.m. on 16 March 2009 in writing or by e-mail whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Ken Landau, Assistant Executive Officer
11020 Sun Center Drive #200
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Lori T. Okun, Senior Staff Counsel
State Water Resources Control Board Office of Chief Counsel
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Prosecution Team:

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Lonnie Wass, Supervising WRC Engineer
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The primary contact for the Prosecution Team staff is Jill Walsh
(559) 445-5130
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jwalsh@waterboards.ca.gov

Discharger:

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California Dairies, Inc.
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Discharger attorney
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Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Ken Landau, Assistant Executive Officer, and Lori T. Okun, Senior Staff Counsel. Members of the Prosecution Team are: Pamela Creedon, Executive Officer; Lonnie Wass, Supervising WRC Engineer; Jo Anne Kipps, Senior WRC Engineer; Jill Walsh, Sanitary Engineering Associate; and Patrick Pulupa, Staff Counsel. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Members of the Prosecution Team may have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the ACL Complaint between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: each designated party shall have a combined 40 minutes to present evidence, cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations, and participants are requested to avoid redundant comments. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary.

Evidence, Exhibits and Policy Statements

The following information must be submitted in advance of the hearing:

1. All written evidence and exhibits that a designated party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Water Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3.
2. All legal and technical arguments or analysis.
3. The name of each witness, if any, whom the designated party intends to call at the hearing; the subject of each witness' proposed testimony; and the estimated time required by each witness to present direct testimony.
4. The qualifications of each expert witness, if any.

The Prosecution Team shall place all materials to be considered by the Central Valley Water Board in this matter in the public file no later than **5 p.m. on 19 March 2009**.

The remaining designated parties (including the Discharger) shall submit 9 hard copies and one electronic copy of the information to Ken Landau no later than **5 p.m. on 9 April 2009**.

If the total amount of information submitted by any party is fewer than 15 pages, that party may submit the information by e-mail, rather than in writing. In addition to the foregoing, each designated party shall send (1) one copy of the above information to each of the other designated parties by 5 p.m. on the deadlines specified above.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible. Interested persons do not need to submit written comments in order to speak at the hearing. In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and

testimony that is not submitted in accordance with these Hearing Procedures. Excluded evidence and testimony will not be considered by the Central Valley Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. A copy of such material intended to be presented at the hearing must be submitted to the Advisory Team at or before the hearing for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing ("declarant") shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

If any declarant will be unavailable for hearing, the Discharger, the Prosecution Team and any other Designated Parties shall meet and confer prior to the hearing regarding objections. Any objections to the requirement to have a particular declarant present shall be submitted to Lori Okun by email no later than **16 April 2009**, but should be submitted as early as possible.

Evidentiary Documents and File

The Complaint and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 1685 E Street, Fresno, CA 93706. Although an appointment is not necessary to view the public files, to facilitate review, please call Jill Walsh in advance at (559) 445-5130 to arrange a file review. This file shall be considered part of the official administrative record for this hearing. Other timely submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board Chair. Many of these documents are also posted on-line at: <http://www.waterboards.ca.gov/centralvalley/>

Although the web page is updated regularly, to assure access to the latest information, you may contact Jill Walsh at the above number.

Questions

Questions concerning this proceeding may be addressed to Lori Okun.

IMPORTANT DEADLINES

19 Feb 09	Prosecution Team issues ACL Complaint to Discharger
23 Feb 09	Prosecution Team sends proposed Hearing Procedures to Discharger and Advisory Team
02 Mar 09	Objections due on proposed Hearing Procedures
05 Mar 09	Deadline for submission of request for designated party status.
12 Mar 09	Deadline for opposition to request for designated party status.
16 Mar 09	Advisory Team notifies Designated Parties of determination on requests for designated party status, if any.
19 Mar 09	Prosecution Team's deadline for submission of evidence, testimony and witness lists.
09 April 09	Remaining Designated Parties' Deadline (including the Discharger) for submission of evidence, testimony and witness lists.
13 April 09	All Designated Parties' deadline for submission of rebuttal evidence (if any) and evidentiary objections.
16 April 09	Submit any requests for modification of requirement to have declarant present to affirm testimony and be available for cross-examination
23/24 April 09	Hearing